

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DORSEY W. McCULLOUGH,)
)
 Plaintiff)
)
 v.) NO. 3:06-0732
)
 AMERICAN GENERAL INSURANCE)
 COMPANY, AFRICAN METHODIST)
 EPISCOPAL CHURCH, INC.,)
 JEROME V. HARRIS, PHILLIP)
 ROBERT COUSIN, SR., JOHN R.)
 BRYANT, and BOOKER T. GUYTON,)
)
 Defendants)

TO: The Honorable Thomas A. Wiseman, Jr.

REPORT AND RECOMMENDATION

For the reasons stated below, the Magistrate Judge recommends that the case as to the case against John R. Bryant ("Mr. Bryant") be dismissed without prejudice for failure to show proof of service of process under Rule 4(m).

I. Background

This case was originally filed on July 27, 2006. The Plaintiff's counsel has had difficulty in obtaining service of process and in providing the Court with proof of service of process ever since. The Magistrate Judge had to continue the initial case management conference of September 15, 2006, because of a failure to obtain service of process (Docket Entry 10) and again on October 24, 2006 (Docket Entry 17).

At the case management conference finally held on

November 28, 2006, Plaintiff's counsel advised that service of process had been obtained on Mr. Bryant. Plaintiff's counsel was directed to file proof of service of process forthwith.

Although Plaintiff's counsel filed an illegible return of service of process for Mr. Harris, he has filed no proof of service for Mr. Bryant and no attorney has made an appearance for Mr. Bryant.

II. Legal Discussion

Federal Rule of Civil Procedure 4(m) provides:

If service of the summons and complaint is not made upon the defendant within 120 days after the filing of the complaint, the Court upon motion or on its own initiative, after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be affected within a specified time; provided that if the plaintiff shows good cause for the failure, the Court shall extend the time for service for an appropriate period.

In this case, the Plaintiff has previously been warned by the Court that he must obtain service of process within 120 days. At the present time, it has been over 145 days and no proof of service of process has been shown on Mr. Bryant. If service was made, proof of that service is a simple matter. No proof has been provided.

III. Recommendation

As stated above, the Magistrate Judge recommends that the complaint as to Mr. Bryant be dismissed without prejudice for failure to obtain service of process.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

It is so **ORDERED**.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge